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May 6, 2005

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
Received

MAY 09 2005

SACRAMENTO

Re: Proposed Regulation Regarding Acrylamide:
Clear and Reasonable Warnings (Safe Harbor Warning)

Dear Ms. Oshita:

This office represents the Council for Education and Research on Toxics (CERT), which, as you are aware, has commenced a private enforcement action under Proposition 65 against McDonald's and Burger King for violating the proposition due to the acrylamide content of their french fries.

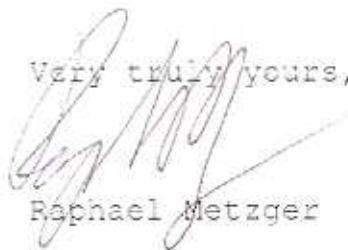
The purpose of this letter is to inform CEHHA that CERT opposes generic point-of-sale warnings for acrylamide as being contrary to the clear and reasonable warning requirement of Proposition 65 and contrary to sound public policy. Allowing fast food outlets to post a sign stating that unspecified food products sold in the establishment contain a chemical known to the State to cause cancer would fail to inform consumers that it is the french fries, as opposed to the hamburgers or a chicken sandwich, that contain acrylamide and pose a cancer hazard. Consumers would have no way of knowing that if they wish to avoid ingesting carcinogens, they should avoid eating french fries as opposed to other food products which do not contain appreciable levels of acrylamide. Generic point-of-sale warnings would therefore fail to accomplish the purpose and intent of Proposition 65 and would only result in consumer confusion and frustration as society becomes saturated with meaningless generic cancer hazard warnings.

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There is a generic Proposition 65 warning sign in my office building because some lawyer filed a Proposition suit against a bunch of commercial landlords. I don't know whether there is friable asbestos in my office or trace concentrations of a carcinogen being exhausted from the roof of the building into the environment. Neither building management nor the landlord can tell me what the carcinogen is or why the sign is on the building other than to avoid litigation. Since I cannot determine where in the building the carcinogens are located, what their concentrations are, and whether any of them are being released in a manner which could result in harmful exposures, the sign is totally meaningless and merely results in dilution of Proposition 65 warnings and trivialization of the law. The same situation applies to acrylamide in french fries sold at fast food outlets.

It is CERT's position that Proposition 65 warnings regarding acrylamide must be specific and must inform the consumer of the particular food items which present a cancer hazard, so that consumers may make informed choices about which fast foods they should shun to avoid ingesting carcinogens. CERT therefore urges OEHHA to reject meaningless point-of-sale warnings for acrylamide and require warnings for those specific products that actually present a cancer hazard. In the case of french fries, the warnings should either be required on the containers of the french fries or on signs which specifically identify the french fries as the food item containing the carcinogen acrylamide.

Very truly yours,



Raphael Metzger

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